**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE**

**WRIT PETITION NO. 5640 OF 2007**

Bachnu Ghanoo Yadav .... Petitioner

versus

Executive Engineer, MHADA..... Respondent.

Shri C.J.Sawant Sr. adv. i/b. Thomas Almeida for the petitioner.
Shri A.A.Kumbhakoni Asstt. Adv. General with G.W.Mottos AGP for respondents.

**CORAM; A.P. DESHPANDE, J.**
**DATED; 24TH AUGUST, 2007**

**P.C.;**

1. 1. The petitioner by this petiiton, questions the legality and validity of a judgment and order dated 9-5-2007 passed by the competent authority and the judgment and order dated 7-7-2007 passed by the Appellate Officer, which directs eviction of the petitioner from the subject premises.

2. The petitioner claims to be a monthly tenant in respect of land admeasuring 375 sq.mtrs. being part of Survey No. 33, Hissa No.10. The petitioner climes to be a monthly tenant in regard to the said property of one zoarastrain Radih Society and the monthly rent

is Rs.30/- per month. Perusal of the record reveals that the petitioner has filed various proceedings with a view to protect his possession and assert his right as a tenant of the said society before various forums. The petitioner did initiate proceedings under section 145 of Cr.P.C. and in the said proceedings it was held that the present petitioner is in possession and that his possession should not be disturbed except after following due process of law. On similar lines, the petitioner had instituted a suit against the society in the Small Causes Court, claiming that the petitioner is a tenant of the said society and is in possession of the above referred property. The suit filed by the petitioner claiming a declaration that he is a tenant, came to be dismissed by the Small Causes Court. Thereafter apprehending forcible dispossession at the hands of MHADA so also the society, the petitioner filed a suit in the City Civil Court and the suit came to be decreed and the decree of injunction came to be passed against the defendants restraining them from taking possession of the suit property from the plaintiff without following due process of law. Perusal of para 16 of the said judgment makes a mention to the filing of a suit by the plaintiff in the Small Causes Court and its dismissal.

3. It is observed that the learned advocate for the defendant argued that the suit which was filed by the plaintiff in the Small Causes Court, Bandra was dismissed and therefore he has no case. That was the suit filed against the defendant no.2 (society) for a declaration that he is a tenant in respect of the suit land and for injunction. By dismissing the suit the declaration sought by the petitioner that he is a tenant was rejected. After the suit was decreed by the City Civil Court, Mhada initiated proceeding sunder section 66(i)(b) of the MHADA Act 1976 by treating the petitioner as a person in an unauthorised occupation of the premises. The competent authority after affording an opportunity of hearing to the present petitioner, has held that the petiitoner is in unauthorised occupation. The said finding has been confirmed by the dismissal of an appeal by the Appellate Auhority. The learned counsel for the petitioner has submitted in the first place that the very initiation of the proceedings under section 66(i)(b) is misconceived in as much as the petitioner's possesison is a settled possession for last about 35 to 40 years. The petitioner could not have been poroceeded against as a person in unauthorised occupation. The learned counsel submits that the settled possession clothes the person in possession with a status of an authorised occupation.

It is then submitted that as the possession of the petitioner is settled over a long period of time, he could only be proceeded against under section 66(i)(a) of the Act and on the grounds mentioned therein.

4. Though each and every authority has found the petitioner to be in possession of the premises, the status of the petiitoner as a tenant of the society as claimed by him, has not been accepted by any authority or the court. On the contrary the claim of the petitioner to be a tenant of the society, has been rejected by the Small Causes Court, by dismissing the suit. The stand of the society is clear that at no point of time, they have inducted the petitioner as a tenant. It is also undisputed that the petitioner has never paid any rent to the society or for that matter to Mhada after the acquisition. It has also come on record that whatever structure has been erected by the petitioner on the suit land has been so erected without seeking any prior permission of he BMC.

5. The authorities below have recorded a concurrent finding that though the petitioner is in possession, his induction in the property is not lawful and is not traceable to any authority of the owner. I am of the clear view that the settled possession for a long period does not cloth the person with the status of

authorised occupant, in case the initial induction is not legal. Hence I do not find any fault with the impugned order confirming the action under section 66(1)(b) of MHADA Act.

6. The learned counsel for the petitioner has invited my attenion to the Consent Terms filed in the High Court in Pursuance of which the appeal came to be disposed of. Perusal of the Consent Terms reveal that the appellants agreed to relinquish its claim to some of the properties of the Zoarastrian Radih society which were of religious importance and in lieu thereof the society agreed to hand over another property, referred to in the Consent Terms. Para 8 of the Consent Terms if read in the above context, goes to show that the appellant no.4 (Mhada) agreed to remove the encroachment on the land, which was being transferred in favour of the society. However the said removal of encroachment were to be in relation to encroachments made after the year 1985 and not prior thereto, The reference to the land in paragraph 8 are the lands which were to be released by the appellants in favour of the respondent society. The suit land does not form part of the said property.

7. In this view of the matter, the submission made by the learned counsel for the petitioner that Mhada

could not have proceeded to evict the petitioner under section 66(1)(b), in view of the Consent Terms referred to in para 8, cannot be accepted. There being no merit in the petition, the same is summarily dismissed.

8. At this stage the learned counsel for the petitioner seeks stay of eviction for a period of six weeks. The prayer made is reasonable and the same stands granted. The order of eviction shall remain stayed for a period of six weeks from today.

....